

3 Pages

WILKE, FLEURY, HOFFELT, GOULD & BIRNEY, LLP
DANIEL L. EGAN (SBN 142631)
MEGAN A. LEWIS (SBN 221263)
STEVEN J. WILLIAMSON (SBN 238869)
400 Capitol Mall
Twenty-Second Floor
Sacramento, CA 95814
Telephone: (916) 441-2430
Facsimile: (916) 442-6664

Attorneys for Creditor
TRAYNOR MARINA INVESTMENTS, LLC

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

ROBERT A. COOK,
Debtor.

Case No.: 11-39335-C-11

WFH-1

Date: September 21, 2011
Time: 10:00 a.m.
Dept: C

APPLICATION FOR RULE 2004 EXAMINATION OF ROBERT A. COOK

Traynor Marina Investments, LLC, Creditor, in this case ("Traynor") submits this application for an order authorizing an examination of Robert A. Cook ("Debtor") pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure.

I.
FACTS

Traynor is a judgment lien creditor of Debtor asserting a claim in the approximate amount of \$1.1 million. Traynor has been in the process of attempting to collect its judgment for almost one year. Traynor had obtained appointment of a receiver over Debtor's assets, and had obtained charging orders against Debtor's partnerships and limited liability companies. Traynor had also filed a motion with the Sacramento Superior Court seeking an order authorizing the foreclosure of Traynor's judgment lien on certain of Debtor's partnership and limited liability company

1 interests. Debtor commenced this Chapter 11 case immediately before the hearing to forestall
2 Traynor's foreclosure efforts.

3
4 **II.**
DISCUSSION

5 Traynor seeks an order authorizing Traynor to subpoena documents from Robert A. Cook
6 ("Debtor") to aid Traynor's investigation of Debtor's assets and to aid in locating any potential
7 missing funds. Trustee also seeks an order authorizing the examination of Debtor. Rule 2004 of
8 the Federal Rules of Bankruptcy Procedure provides as follows:

9 Rule 2004. Examination

10 (a) Examination on motion. On motion of any party in interest, the
court may order the examination of any entity.

11 (b) Scope of examination. The examination of an entity under this
12 rule or of the debtor under § 343 of the Code may relate only to the
13 acts, conduct, or property or to the liabilities and financial condition
of the debtor, or to any matter which may affect the administration
14 of the debtor's estate, or to the debtor's right to a discharge. In a
family farmer's debt adjustment case under chapter 12, an
15 individual's debt adjustment case under chapter 13, or a
reorganization case under chapter 11 of the Code, other than for the
16 reorganization of a railroad, the examination may also relate to the
operation of any business and the desirability of its continuance, the
17 source of any money or property acquired or to be acquired by the
debtor for purposes of consummating a plan and the consideration
18 given or offered therefor, and any other matter relevant to the case
or to the formulation of a plan.

19 (c) Compelling attendance and production of documents. The
attendance of an entity for examination and for the production of
20 documents, whether the examination is to be conducted within or
without the district in which the case is pending, may be compelled
21 as provided in Rule 9016 for the attendance of a witness at a
hearing or trial. As an officer of the court, an attorney may issue
22 and sign a subpoena on behalf of the court for the district in which
the examination is to be held if the attorney is admitted to practice
23 in that court or in the court in which the case is pending.

24 (d) Time and place of examination of debtor. The court may for
25 cause shown and on terms as it may impose order the debtor to be
examined under this rule at any time or place it designates, whether
26 within or without the district wherein the case is pending.

27 (e) Mileage. An entity other than a debtor shall not be required to
28 attend as a witness unless lawful mileage and witness fee for one
day's attendance shall be first tendered. If the debtor resides more

1 than 100 miles from the place of examination when required to
2 appear for an examination under this rule, the mileage allowed by
3 law to a witness shall be tendered for any distance more than 100
4 miles from the debtor's residence at the date of the filing of the first
petition commencing a case under the Code or the residence at the
time the debtor is required to appear for the examination, whichever
is the lesser.

5 USCS Bankruptcy R 2004

6 Traynor requests an order authorizing Traynor to subpoena records from Robert A. Cook
7 pursuant to Rule 2004 and to examine Robert A. Cook regarding all matters subject to an
8 examination under Rule 2004.

9 **III.**
10 **PRAYER FOR RELIEF**

11 Wherefore, Traynor requests an order authorizing Traynor to subpoena all records from
12 Robert A. Cook and authorizing an examination of Robert A. Cook under Rule 2004 of the
13 Federal Rules of Bankruptcy Procedure.

14
15 DATED: September 7, 2011

16 WILKE, FLEURY, HOFFELT,
GOULD & BIRNEY, LLP

17
18
19 By: 

20 DANIEL L. EGAN
Attorneys for Creditor
21 TRAYNOR MARINA INVESTMENTS,
22 LLC
23
24
25
26
27
28